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EX PARTE COMMUNICATION

February 15, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie R. Salas, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: In the Matter of Petitions for Emergency Relief Regarding Release of
the 855 Toll Free Code
CC Docket No. 955-155 /
File No. NSD-L-00-249

Dear Ms. Salas:

The Toll Free Number Coalition ("TFNC"),¹ by its attorneys, hereby submits this rejoinder to the Reply Comments of the Bell Operating Companies and Database Service Management, Inc. ("DSMI") ("Reply Comments"), dated December 20, 2000.

In an effort to shift the responsibility for the failures in the operation of the SMS/800 to others, the Reply Comments point the finger at TFNC and TTFCC for filing their Emergency Petitions at the "eleventh hour," conveniently ignoring the

¹ The Reply Comments repeatedly refer to the TFNC and the Toll Free Commerce Coalition ("TTFCC") as the "Coalitions," thereby ascribing to TFNC arguments which were made by TTFCC and, more egregiously, suggesting that there has been no difference in the actions of the members of the two coalitions with respect to the rollout of the 866 and 855 codes. TFNC takes strong objection to the mischaracterization of its actions which result from the Reply Comments failure to distinguish between the two coalitions. The record is clear, from both the initial petition and the Reply Comments filed by TFNC, that its members have participated diligently in SNAC proceedings; cooperated with the SMS/800 Data Center by committing significant resources to the testing of the SMS system that was conducted following the failure of the system during the opening of the 866 code; and worked diligently to prepare for the opening of the 855 code on the originally scheduled date of November 18.

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sequence of events which prompted petitioners to take this, admittedly extraordinary, step:

1. The flawed 1998 rollout of the 877 code;²
2. The flawed July, 2000, rollout of the 866 code, despite the fact that DSMI had more than two years to correct the problems experienced during the 877 rollout;³
3. The rollout of the 866 code before implementation of the "first-come, first-served" changes mandated by with the Commission rules;⁴ and
4. DSMI's distribution of a software upgrade for the 855 rollout required by GUI users to interface with the SMS/800 only two weeks before the scheduled rollout of the 855 code, and the numerous modifications required during that two week period in order for the software to function properly.⁵

At the time TFNC filed its Emergency Petition, the software required for the 855 rollout was not functioning properly, and TFNC's members concluded that the only way to avoid another flawed rollout was to request the Commission to intercede. While the petition could have been filed earlier, TFNC elected to give DSMI every opportunity to demonstrate that the problems encountered previously had been corrected, and delayed the filing until it became apparent that it was no longer reasonable to rely on DSMI's assurances that the problems experienced during the opening of the 877 and 866 codes would be rectified prior to the 855 rollout.

Now that the process has been placed on hold, TFNC urges the Commission to address all of the pending related petitions, some of which were filed over two years ago, and to take such action as is necessary to assure that the operation of the SMS and rollout of new toll-free codes continues in a manner that is consistent with the Commission's policies and regulations.

² See Supplemental Petition for Reconsideration, filed June 26, 1998 by TLDP Communications.

³ TLDP Petition for Emergency Relief and Expedited Action, filed November 6, 2000.

⁴ See *infra*.

⁵ Comments of Toll Free Number Coalition, filed December 13, 2000 ("Initial Comments").

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served capability? Even with a 60% reduction in throughput, Option #3 could have processed all the requests in less than five hours. Given that code openings are planned years in advance, what difference does an extra two or three hours make? When the Commission enunciated its policy, did it envision the drag race among 200+ RespOrgs which has characterized the last two code openings? Was the Commission seeking to reward the RespOrg which develops software that can number process requests a few microseconds faster than any other RespOrg's system? Or was it focusing on day-to-day activities, and the need to assure that an end user who places an order for an 800 number today receives preference over another end user who places an order for the same number the next day, week or month? If the latter is the case, the entire process for opening of new codes should be reassessed, to ascertain whether its current implementation is consistent with Commission policies.

III. The Commission Should Address All Related Pending Petitions Before Allowing the 855 Code to be Opened

As noted in TFNC's Comments, there are related petitions in this docket that have been pending for almost three years. TFNC urges the Commission to address the issues raised therein, and to resolve all pending policy issues prior to permitting the opening of the 855 code to proceed. With toll free number exhaustion not expected to occur for almost three years, there is no need for hasty action which cannot be reversed.

Sincerely,



Eric Fishman
Counsel to
Toll Free Number Coalition

cc: Chairman Michael Powell
Commissioner Harold Furchtgott-Roth
Commissioner Gloria Tristani
Commissioner Susan Ness
Dorothy Atwood, Chief, Common Carrier Bureau
Yog R. Varma, Common Carrier Bureau
Martin Schwimmer, Network Services Division

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Parties of Record

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I. DSMI Has Failed to Demonstrate that the SMS/800 System Complies with the Commission's Requirements

DSMI argues that the system improvements implemented since the rollout of the 866 code provide "essentially equal access"⁶ and that the three interfaces "are now as equivalent as possible given their inherent technological limitations."⁷ DSMI understands, however, that this is not at all the case. While the industry opted for the "Option #2A" changes to the SMS/800 last spring, DSMI argued that only Option #3 provided full first-come, first-served capability. Indeed, during one of the conference calls held to discuss the issue, the SMT representative stated that they would refrain from implementing any changes unless Option #3 were selected. Only after industry representatives protested the projected 52-62% reduction of through-put capacity under Option #3, was agreement reached on Option #2A.

While DSMI contends that the new software has been adequately tested, only the "response" function, which DSMI contends was the cause of the lockout during the 866 rollout, was tested with industry participation. The first-come, first-served functionality was only tested internally by Telcordia, under simulated conditions.⁸ In light of the failure of the SMS/800 system to work properly during the opening of the 877 and 866 codes, it is reasonable for TFNC and TTFCC to demand that the new software be fully tested, with adequate industry participation, in advance of the 855 rollout.

II. The Commission Should Review and Clarify the Requirements of its First-Come, First-Served Policy

As a result of the failures experienced in the SMS/800's operation during the 877 and 866 code openings, which resulted in some RespOrgs being locked out of the system while others submitted reservations for thousands, or even tens of thousands of numbers, the Commission should clarify the requirements of its first-come, first-served policy, as expounded in its Fourth Report and Order in CC Docket No. 95-155,⁹ and in SMT/DSMI Tariff, Section 2.3.1. If all of the reservation activity for a code opening can be completed in less than two hours, as occurred with the 866 code notwithstanding the problems which were experienced, why didn't SNAC implement Option #3, which would have provided true first-come, first-

⁶ BOC/DSMI Reply Comments, filed December 20, 2000, at p. 3.

⁷ *Id.* at p. 8.

⁸ Minutes of November 3, 2000, SNAC Conference Call, III(3).

⁹ Toll Free Access Codes, 13 FCC Rcd 9058 (1998) at ¶ 3 et seq.